IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1107 OF 2004

IN

SUIT NO.1031 OF 2004

Shashikala Sakharam Keni ... Plaintiff.

vs.

1.Kamalakar Khanderao Patil. & others. .... Defendants.

Mr.P.K.Samadhani i/b. H.S.S.Murthy, for Plaintiff.

Mr.A.C.Singh i/b. D.R.Shah, for Defendant nos.1 to 4.

Mrs.Shah, for Defendant no.5.

Mr.N.G.Thakkar i/b. S.G.Surana, for Defendant nos.6 to 8.

CORAM: D.K.DESHMUKH,J.

DATED: 21st July,2005

P.C.:-

1. I have heard the learned Counsel appearing for plaintiff, the learned Counsel appearing defendant nos.1 to 4 and the learned Counsel appearing for defendant nos.6 to 8. Though there are several agreements

entered into in relation to the property at Sr.no.1 to 7, it appears that the agreement dated 7.1.2002 between the plaintiff, defendant nos.1 to 4 on one side and defendant no.6 to 8 on the other, was the final agreement between the parties. As per that agreement, the plaintiff and defendant nos. 1, 2 and 4 were to be given four flats by defendant nos.6 to 8. The learned Counsel for defendant nos. 6 to 8 submits that defendant nos.6 to 8 are willing to hand over four flats to the plaintiff and defendant nos. 1,2 and 4 as per the agreement after the construction of those flats is completed and the occupation certificate is issued.

2. In this view of the matter therefore, it is directed that the Receiver of this Court is appointed as Receiver of the Four flats constructed on the land described at Item nos.1 to 7 of the Schedule at “Exhibit A” to the plaint, by defendant nos. 6 to 8. The defendant nos. 6 to 8 shall hand over possession of those flats after obtaining occupation certificate from the planning authority, to the Court Receiver. The Receiver after receiving the possession shall appoint the plaintiff and defendant nos. 1, 2 and 4 as his agents to be in possession of the flats on usual terms and conditions except royalty and security. The receiver shall appoint plaintiff and defendant nos. 1, 2 and 4 each as his agent of each flat by drawing lots.

3. The agent shall be liable to pay outgoing and taxes of the property.

4. It is clear from the agreement that the amount of Rupees One Crore was to be paid to the owners of the property viz. Plaintiff and defendant nos. 1 to 4. Admittedly, defendant nos. 6 to 8 have paid that amount to the defendant nos. 1 to 4. According to defendant nos. 1 to 4, share of the plaintiff has been paid to her out of the amount of Rupees One Crore. However, the defendant nos. 1 to 4 are not in a position to produce any receipt or document which will show that the share of the plaintiff is paid to her. In these circumstances, therefore, it prima facie appears that though defendant nos. 1 to 4 received share of the plaintiff, they have not paid the amount to the plaintiff. Therefore, in my opinion, considering the relationship between the parties, it will be appropriate to direct defendant nos.1 to 4 to deposit share of the plaintiff in the Court. The learned Counsel for defendant nos. 1 to 4 states that they require three months time to deposit the amount. Therefore, it is directed that defendant nos. 1 to 4 shall deposit in the Court amount of Rs.20,00,000/- (Rupees Twenty lakhs only) with interest at the rate of 10% per annum from January,2002 till the date of deposit within a period of three months from today with due notice to the plaintiff.

5. The Prothonotary and Senior Master of this Court shall permit the plaintiff to withdraw the amount on furnishing undertaking to re-deposit the amount or such part of the amount as may be directed by the Court and on such terms and conditions as may be directed by the Court.

6. So far as the properties described at item nos.11 to 16 except item no.13 of Exhibit A i.e. Schedule of the property is concerned, the defendant nos. 1 to 4 stated before me that they will continue to abide by their statement made before the Court which is recorded in the order dated 21.9.2004 during the pendency of the suit. The learned Counsel for defendant nos. 1 to 4 also states that defendant nos.1 to 4 shall submit accounts of the flour mill which is situated on the property described at item no.16 at Exhibit A i.e. schedule of the property, within a period of four weeks from today. After the accounts are submitted, the plaintiff shall be at liberty to take out fresh notice of motion seeking appropriate reliefs.